

**State of California
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

SUPPLEMENTAL FINAL STATEMENT OF REASONS

Subject Matter:

Workers' Compensation – Supplemental Job Displacement Benefit

Title 8, California Code of Regulations, sections 10133.50 through 10133.60

THE FOLLOWING ADDITIONAL NON-SUBSTANTIVE / CORRECTIONS WITHOUT REGULATORY EFFECT WERE MADE TO THE TEXT OF THE REGULATIONS AFTER THE CLOSE OF THE FINAL COMMENT PERIOD

1. Section 10133.50 Definitions

Subdivision (a)(10) was corrected to improve the syntax. The subdivision now states: “(10) Offer of Modified or Alternative Work. An offer to the injured employee of medically appropriate employment with the date-of-injury employer in a form and manner prescribed by the Administrative Director.”

2. Section 10133.51 Notice of Potential Right to Supplemental Job Displacement Benefit

Subdivision (a) was corrected to state “This section and section 10133.52 shall only apply to injuries occurring on or after January 1, 2004.” The supplemental job displacement benefit is mandated by Labor Code section 4658.5. Labor Code section 4658.5(d) provides that it shall apply to injuries occurring on or after January 1, 2004. Therefore, this modification conforms to mandated statutory language.

In subdivision (b), the incorrect reference to the “Notice of Potential Right to Supplemental Job Displacement Benefit” form was corrected to: “Notice of Potential Right to Supplemental Job Displacement Benefit Form.”

2. Section 10133.52 “Notice of Potential Right to Supplemental Job Displacement Benefit Form”

The lay-out of this section was corrected by stating the title of the form on one page, followed by the form on two subsequent pages, with the authorities and references on the following page. The title of the form on the first page of the form states: “Notice of Potential Right to Supplemental Job Displacement Benefit Form.” The words “Mandatory Form” are just below the title.

In the first paragraph of the form, the words “Form DWC-AD 10133.53” have been added before the phrase “Notice of Offer or Alternative Work.” The words “as described below” have been deleted.

In the first paragraph following the section listing the SJDB amounts, the phrase “potential eligibility to a voucher” was changed to “potential eligibility for a voucher.”

In the paragraph that begins, “If modified or alternative work...,” the form description was changed to: Form DWC-AD 10133.53 “Notice of Offer or Alternative Work.”

In the paragraph that begins “If there is a dispute...,” the syntax of the sentence was changed to read, “...may file Form DWC-AD 10133.55 “Request for Dispute Resolution before the Administrative Director.”

3. Section 10133.53 Form DWC-AD 10133.53 “Notice of Offer of Modified or Alternative Work”

The lay-out of this section was corrected by stating the title of the form on one page, followed by the form on two subsequent pages, with the authorities and references on the following page. The words “for Injuries Occurring on or after 1/1/04” were stricken from the title of the section because the phrase is on the form. Also, the revised title of the section is consistent with the other section names.

4. Section 10133.54 Dispute Resolution

Subdivision (a) was added to state, “This section and section 10133.55 shall only apply to injuries occurring on or after January 1, 2004.” The supplemental job displacement benefit is mandated by Labor Code section 4658.5. Labor Code section 4658.5(d) provides that it shall apply to injuries occurring on or after January 1, 2004. Therefore, this modification conforms to mandated statutory language.

The subsequent sections were re-lettered.

Former subdivision (b)(1), which is now (c)(1), was changed to: Complete Form DWC-AD 10133.55 “Request for Dispute Resolution before the Administrative Director.” Former subdivision (b)(5), which is now (c)(5), was changed to: Sign and date the proof of service section of Form DWC-AD 10133.55 “Request for Dispute Resolution before the Administrative Director.” These two changes were made to have consistent reference to the Forms.

In former subdivision (f), which was changed to (g), the Title 8 reference (section 10414) for the Declaration of Readiness was added.

5. Section 10133.55 Form DWC-AD 10133.55 “Request for Dispute Resolution before the Administrative Director”

The lay-out of this section was corrected by stating the title of the form on one page, followed by the form on one subsequent page, with the authorities and references on the following page.

6. Section 10133.56 Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher

Subdivision (a) was added to state, “This section and section 10133.57 shall only apply to injuries occurring on or after January 1, 2004.” The supplemental job displacement benefit is mandated by Labor Code section 4658.5. Labor Code section 4658.5(d) provides that it shall apply to injuries occurring on or after January 1, 2004. Therefore, this modification conforms to mandated statutory language.

The subsequent section was re-lettered.

Former subdivision (a)(3) was revised as (b)(3) to state “(3) either the injured employee does not return to work for the employer within 60 days of the termination of temporary disability benefits; or” This change was made to correct the syntax.

Former subdivision (b) was changed to (b)(4) to state “(4) in the case of a seasonal employee, where the employee is unable to return to work within 60 days of the termination of temporary disability benefits because the work season has ended, the injured employee does not return to work on the next available work date of the next work season.” This change was made to correct the syntax.

The subsequent sections were re-lettered.

7. Section 10133.57 Form DWC-AD 10133.57 “Supplemental Job Displacement Nontransferable Training Voucher Form”

The lay-out of this section was corrected by stating the title of the form on one page, followed by the form on two subsequent pages, with the authorities and references on the following page.

The form was revised to include the following at the top of the form:

(Form DWC-AD 10133.57 – Mandatory Form)
For injuries occurring on or after 1/1/04

8. Section 10133.58 State Approved or Accredited Schools

Subdivision (a) was added to state, “This section shall only apply to injuries occurring on or after January 1, 2004.” The supplemental job displacement benefit is mandated by Labor Code section 4658.5. Labor Code section 4658.5(d) provides that it shall apply to injuries occurring on or after January 1, 2004. Therefore, this modification conforms to mandated statutory language.

The subsequent sections were re-lettered.

9. Section 10133.59 The Administrative Director's List of Vocational Return to Work Counselors

The first sentence, "For injuries occurring on or after 1/1/04" was replaced with subdivision (a), which states, "This section shall only apply to injuries occurring on or after January 1, 2004." This change was made to be consistent with the other sections.

The subsequent sections were re-lettered.

10. Section 10133.60 Termination of Employer's Liability for the Supplemental Job Displacement Benefit

This section has been modified to state:

"(a) For injuries occurring on or after January 1, 2004, the claims administrator's liability to provide a supplemental job displacement voucher shall end if any of the following circumstances occur:

(1) the claims administrator offers modified or alternative work to the employee, meeting the requirements of Labor Code §4658.6, on DWC-AD Form 10133.53 "Notice of Offer of Modified or Alternative Work";

(A) If the claims administrator offers modified or alternative work to the employee for 12 months of seasonal work, the offer shall meet the following requirements:

1. the employee was hired on a seasonal basis prior to injury; and

2. the offer of modified or alternative work is on a similar seasonal basis to the employee's previous employment;

(2) the maximum funds of the voucher have been exhausted."

This section was modified to improve the syntax, clarity, and because it contained superfluous subsections. The subsections that were removed from this section (former subsections (a)(2) and (a)(3)) were repetitive in light of Labor Code section 4658.6, which provides when the employer will not be liable for the supplemental job displacement benefit. Both former subsections were predicated on the employer offering modified or alternative work according to Labor Code section 4658.6. As stated in the statute, if such an offer is made, the employer is not liable for the benefit. Therefore, the subsections were superfluous to the statute and to the current subdivision (a)(1).

The reference to *Henry v. WCAB* (1998) 68 Cal.App.4th 981 has also been added. This case holds that a seasonal employee is entitled to 12 months of alternate seasonal work not 12 months of continuous work subsequent to an on the job injury.